

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**RAMAH NAVAJO CHAPTER,
OGLALA SIOUX TRIBE, and PUEBLO
OF ZUNI**, for themselves and on behalf
of a class of persons similarly situated,

Plaintiffs,

vs.

No. CIV 90-0957 LH/WWD ACE

GALE NORTON, Secretary of the
Interior, in her official capacity,
**UNITED STATES DEPARTMENT OF
INTERIOR, NEIL McCALEB**, Assistant
Secretary of Interior for Indian Affairs,
in his official capacity, **EARL DEVANEY**,
Inspector General, in his official capacity,
and **UNITED STATES OF AMERICA**,

Defendants.

SECOND PARTIAL SETTLEMENT AGREEMENT

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SECOND PARTIAL SETTLEMENT AGREEMENT

WHEREAS, on October 4, 1990, Plaintiff Ramah Navajo Chapter filed a class action, Ramah Navajo Chapter v. Norton, No. CIV-90-0957 LH/WWD, under the Contract Disputes Act ("the CDA"), 41 U.S.C. Section 601, et seq., and the Indian Self Determination and Education Assistance Act ("the ISDEAA"), 25 U.S.C. Section 450m-1, in which the Plaintiffs raised allegations relating to the formula used by the Department of Interior to calculate indirect contract support costs for Indian tribes contracting under the ISDEAA. The claims relating to the indirect contract support cost formula as defined herein are referred to hereinafter as the "Calculation Claim," and

WHEREAS, in 1998, the parties in Ramah Navajo Chapter v. Norton, No. CIV-90-0957 LH/WWD, entered into a partial settlement of claims arising out of Interior's use of this indirect contract support cost formula for years prior to 1994 (hereinafter "First Partial Settlement Agreement"), but reserved for further litigation other claims, including claims challenging the United States Department of Interior ("DOI") indirect contract support cost ("Indirect CSC") formula for years 1994 to the present, and

WHEREAS, the certified Ramah Class later moved to amend its complaint to include a new claim defined herein as the "Shortfall Claim," and the Oglala Sioux Tribe moved to intervene and raise the same shortfall claim on behalf of the Class for an additional time period, and

WHEREAS, notice was sent to the Class as to the inclusion of the "Shortfall Claim," and that Class members had the opportunity to opt out of the Class with respect to the "Shortfall Claim," and

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WHEREAS, no Class member opted out of the Class with respect to the "Shortfall Claim" except for the Jackson Bank of Miwuk Indians, who filed an opt out notice with the Court on March 2, 2000 (Docket No. 404), but signed a release and disclaimer on August 30, 2002, of any right to this settlement and of any right to pursue an independent suit against defendants for the claims settled by this Second Partial Settlement Agreement, and

WHEREAS, on March 14, 2000, the plaintiff Pueblo of Zuni filed a separate putative class action, Pueblo of Zuni v. United States, No. CIV-00-0365 LH/WWD, raising what is defined herein as the "Direct CSC Claim" for FY 1993 and forward, and

WHEREAS, Defendants answered the plaintiff Zuni's Complaint on May 30, 2000, but no class was certified in the case and no other substantive pleadings were filed, and

WHEREAS, the named plaintiff Ramah Navajo Chapter filed a motion to amend the complaint in the Ramah action to assert the same claim for FY 1994 and forward as that asserted by Plaintiff Zuni in Pueblo of Zuni v. United States, No. CIV-00-0365 LH/WWD (alleging that the Department of Interior was in violation of the ISDEEA for its alleged failure to pay direct contract support costs ("Direct CSC") to tribes for fiscal years 1994 to the present), which motion was granted by Order of March 27, 2002 (Docket No. 634), and

WHEREAS, the Zuni action was voluntarily dismissed after its claims were consolidated into the Ramah action and the Pueblo of Zuni intervened in that action as class representative for the Direct CSC claim, with Ramah Navajo Chapter as co-class representative as to that claim, all pursuant to the Order of March 27, 2002 (Docket No. 633), and

WHEREAS, upon approval of the Court, notice was sent to the Class that the Zuni Action was being consolidated with the Ramah Action, that a new claim, the Direct CSC Claim, was

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being added to the Ramah Action, and that Class members had the opportunity to opt out of the Class as to the new Direct CSC Claim, and

WHEREAS, no Class member opted out of the Class as to the new Direct CSC Claim, and

WHEREAS, the parties desire to avoid the expense, delay, and inconvenience of further litigation of several issues raised in this action.

NOW THEREFORE, in reliance upon the representations, mutual promises, covenants, and obligations set out in this Second Partial Settlement Agreement, and for good and valuable consideration also set out in this Second Partial Settlement Agreement, plaintiffs and defendants in the above-captioned action, by and through their respective counsel, hereby stipulate and agree as follows:

I. DEFINITIONS

The following terms, as they are used in this Second Partial Settlement Agreement, shall have the meanings defined below:

A. "Second Partial Settlement Agreement"

This document, which is entitled "Second Partial Settlement Agreement," contains the agreement reached by the parties, subject to approval of the Court after notice to the Class and a hearing on the proposed partial settlement. The Second Partial Settlement Agreement has been signed by counsel of record for plaintiffs and counsel of record for defendants, and incorporates the following appendices attached hereto:

Appendix A First Partial Settlement Agreement

Appendix B Release of Claims

- Appendix C [Proposed] Order Granting Preliminary Approval of Second Partial Settlement Agreement and Directing Notice to the Class
- Appendix D Notice Of Second Partial Class Settlement And Related Matters
- Appendix E [Proposed] Rule 54(b) Judgment Approving Second Partial Settlement
- Appendix F Allocation and Distribution Methodology To Second Partial Settlement Agreement
- Appendix G List of Class Members who participated in the DCSC survey

B. "First Partial Settlement Agreement"

The document entitled "Partial Settlement Agreement", but hereinafter referred to as "First Partial Settlement Agreement", was approved by this Court on May 25, 1999, and is incorporated herein as Appendix A.

C. Parties

1. "Plaintiff RNC"

Plaintiff Ramah Navajo Chapter (hereinafter "Plaintiff RNC") is the named representative in Ramah Navajo Chapter v. Norton, No. CIV-90-0957 LH/WWD, as to the "Calculation Claim," as defined in Section I.G.1 below, and co-class representative as to the "Shortfall Claim" and the "Direct CSC claims" as defined in Sections I.G.2 and G.3 below.

2. "Plaintiff Oglala Sioux"

After the approval of the First Partial Settlement Agreement, the Oglala Sioux Tribe (hereinafter "Plaintiff Oglala Sioux") intervened as an additional class representative in Ramah Navajo Chapter v. Norton, No. CIV-90-0957 LH/WWD, as to the "Shortfall Claim," as defined

in Section I.G.2 below.

3. "Plaintiff Zuni"

Plaintiff Pueblo of Zuni (hereinafter "Plaintiff Zuni") is the named class representative on behalf of the "Direct CSC Claim," as defined in Section I.G.3 below.

4. "The Named Plaintiffs"

Plaintiff RNC, Plaintiff Oglala Sioux, and Plaintiff Zuni are "the Named Plaintiffs."

5. "The Class"

For purposes of this settlement only, "the Class" consists of the Named Plaintiffs and all Indian tribes and organizations who have contracted or compacted with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended ("the ISDEAA"), including the following tribes which opted-out of the Ramah Class but were permitted to re-enter the Class by Orders dated December 3, 1998 (Docket No. 247), December 8, 1998 (Docket No. 250), July 21, 1999 (Docket No. 300), August 1, 2000 (Docket No. 462), August 29, 2000 (Docket No. 466), September 1, 2000 (Docket Nos. 467, 468), November 27, 2000 (Docket No. 487): Navajo Nation, White Mountain Apache Tribe, Eastern Shoshone Tribe, and Consolidated Tribes of Siletz Indians of Oregon.

6. "Defendants"

For purposes of this Second Partial Settlement Agreement, "Defendants" are as follows: The United States Department of Interior; Gail Norton, Secretary of the Interior, in her official capacity; Neil McCaleb, Assistant Secretary for Indian Affairs, in his official capacity; Earl Devaney, Inspector General, in his official capacity; and the United States of America but only with respect to contracts or compacts for Bureau of Indian Affairs ("BIA") programs entered into

by the Secretary of United States Department of Interior on behalf of the United States.

D. "Settlement Amount"

"Settlement Amount" is the lump sum payment amount as stated in Section III.A.

E. "Net Common Fund"

The "Net Common Fund" is the amount as stated in Section VI. E.

F. "Final Approval"

"Final Approval" is the date on which the court, after a hearing, enters an order, substantially in the form set forth hereto as Appendix E, approving this Second Partial Settlement Agreement.

G. Claims and Defenses

1. The "Calculation Claim"

The "Calculation Claim" refers to any claim for relief relating to the allegation that defendants applied an incorrect formula for calculating indirect cost rates and, as a result, failed to pay the proper amount of indirect CSC to the Class. The "Calculation Claim" is to be read as identical to the definition of "Plaintiffs' Cause of Action" set forth in Section 3. a. i. of the First Partial Settlement Agreement.

2. The "Shortfall Claim"

The "Shortfall Claim" refers to any claim for relief relating to the allegation that the defendants failed to pay the Class the amount generated by multiplying each Class member's indirect cost rate by the BIA's direct program base under OMB Cir. A-87.

3. The "Direct CSC" Claim

"The Direct CSC Claim" relates to any claim for relief relating to the allegation that

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defendants failed to pay direct CSC.

H. "Class Counsel"

The term "Class Counsel" as used herein refers to Plaintiffs' Counsel listed in Sections A and B of Section XVII.

II. SETTLED AND RESERVED CLAIMS

A. Settled Claims

The parties agree that, except for those claims that are specifically set forth below in Section II.B, this Second Partial Settlement Agreement resolves and extinguishes any and all claims, demands, rights, causes of action and counts for money damages and/or specific monetary relief under any theory of recovery that were or could have been raised against the defendants as defined in Section I.C.6 above, by the Class as a whole in the Class Complaint, as amended, relating to contract support costs ("CSC") including, but not limited to, the Calculation Claim, and the Shortfall Claim and the Direct CSC Claim.

The parties further agree that this Second Partial Settlement Agreement also resolves and extinguishes any and all claims, demands, rights, causes of action and counts for money damages and/or specific monetary relief under any theory of recovery that any individual class member could have raised against the defendants as defined in Section I.C.6 above, relating to CSC, including, but not limited to, the Calculation Claim, and the Shortfall Claim and the Direct CSC Claim, except for those claims specifically set forth below in Section II.B.4 of this Second Partial Settlement Agreement.

Upon the payment of the Settlement Amount to the Clerk as set forth in Section III.A of this Second Partial Settlement Agreement, the Class, by and through their counsel, shall release

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and discharge the Defendants from the Settled Claims by signing the Release of Claims attached hereto as Appendix B.

B. Reserved Claims

The following claims are not settled, dismissed or otherwise extinguished, and are expressly reserved:

1. Contract Support Claims for Certain Years.

The Calculation Claim for FY 1994 and thereafter; the Shortfall Claim for FY 1994 and thereafter; and the Direct CSC Claim for FY 1995 and thereafter;

2. Claims Against the Indian Health Service.

Any claim for money damages, monetary, equitable, or declaratory relief that has or may be brought under ISDEAA or the CDA with respect to contracts or compacts entered into by the Secretary of United States Department of Health and Human Services on behalf of the United States;

3. Causes of Action Arising After September 30, 1994 (after FY 1994).

Any cause of action arising after the end of September 30, 1994;

4. Individual Pending Claims.

Any pending claim by any individual Class member that was commenced prior to October 1, 1994, and is based on (1) an alleged computational error by the Department of the Interior's Office of the Inspector General ("OIG") in calculating a tribe's indirect cost rate; or (2) an alleged failure of BIA to pay an individual contract support obligation the specific amount of which has already been agreed upon in writing where such failure to pay is not based on an

agency-wide policy, practice, rule or regulation of the BIA or DOI or on Federal law; or (3) any claim or defense based on an audit exception, including a statement by the tribe's auditor that a certain expenditure is either contrary to law or not explained and, therefore, may lead to a bill for collection by BIA.

III. AMOUNT AND TIMING OF PAYMENT

A. Settlement Amount

In consideration of this Second Partial Settlement Agreement and the execution by the Class of the Release of Claims attached hereto as Appendix B, Defendants agree to promptly pay the Class a lump-sum amount of Twenty Nine Million Dollars (\$29,000,000.00) (the "Settlement Amount") (which includes principal and any pre-judgment interest, if applicable) in full, complete and final satisfaction of any and all claims, demands, rights, causes of actions and counts set forth in Section II.A of this Second Partial Settlement Agreement.

B. Timing of Payment of Settlement Amount

Defendants shall pay the Settlement Amount to the Clerk of the United States District Court for the District of New Mexico promptly after entry of the Rule 54(b) Judgment Approving Second Partial Settlement (Appendix E) and exhaustion of all rights of appeal therefrom. After payment to the Clerk, the Settlement Amount shall be deposited or invested as ordered by the Court pending distribution without requirement for further notice to the Class regarding the place or conditions of said deposit or investment, provided said deposits or investments conform to the standards applicable to the First Partial Settlement Agreement and are approved by the Court.

IV. PROCEDURES GOVERNING SETTLEMENT APPROVAL

The parties agree that this Second Partial Settlement Agreement shall be implemented in the following manner:

A. Request for Preliminary Approval and Permission to Send and Publish Notice to Class

Upon execution, the parties shall jointly and promptly file this Second Partial Settlement Agreement and request that the Court enter the Order Granting Preliminary Approval of Second Partial Settlement Agreement And Directing Notice to the Class, attached hereto as Appendix C.

B. Distribution of the Notice to Class Members

Promptly after entry of the Order Granting Preliminary Approval of Second Partial Settlement Agreement And Directing Notice to the Class, Class Counsel shall cause a notice, substantially in the form of the "Notice of Second Partial Class Settlement and Related Matters" ("Settlement Notice") attached as Appendix D, to be mailed to all federally-recognized tribes and to the known members of the Class by first-class mail; and shall promptly submit for publication at least once a copy of the Settlement Notice to either Indian Country Today or News From Indian Country, and to one other broad media or internet outlet reaching Indian country which may include the Ramah Class Settlement or Distribution website,

WWW.RNCSETTLEMENT.COM.

For their part, Defendants agree to promptly publish the Settlement Notice in the Federal Register as soon as practicable.

C. Agreement To Bear Cost of Providing Notice

The Class agrees to bear the cost of providing notice to the Class except for those costs associated with the publication of the Settlement Notice in the Federal Register, which costs shall be born by Defendants.

D. Objections and Fairness Hearing

Any member of the Class who wishes to object to the terms of this Second Partial Settlement Agreement must file a written Notice of Objection with the Court specifying the objections and the basis for such objections as provided in the Settlement Notice, with copies served on Defendants' counsel and on Class counsel. In order to have an objection considered and heard at the Fairness Hearing, this written Notice of Objection must be filed with the Court and served on counsel by the date specified in paragraph 5 of the Settlement Notice as approved by this Court by its Order Granting Preliminary Approval Of Second Partial Settlement Agreement And Directing Notice to the Class, attached hereto as Appendix C.

Any Class member who has filed a timely written Notice of Objection may appear and be heard at the Fairness Hearing and show cause why the settlement and compromise in the Second Partial Settlement Agreement should not be approved. Objections to be considered at the hearing will be limited to those matters addressed in timely written Notices of Objection.

Judicial approval will not make this agreement, either explicitly or through incorporation by reference, an order of the Court. However, this provision shall not be construed to limit the Court's power to enforce the terms of this Second Partial Settlement Agreement as provided herein.

At the Fairness Hearing, the parties will request the Court's approval of this Second Partial Settlement Agreement and will present such evidence and/or arguments as may be appropriate to that end. Class Counsel and Defendants shall also be heard on Class Counsel's application for attorneys' fees and costs.

V. EFFECTIVE DATE

The effective date of this Second Partial Settlement Agreement shall be the date that the Court enters an order granting final approval of this Second Partial Settlement Agreement in substantially the form attached as Exhibit E ("Final Approval Order").

In the event of an appeal from said Order by a Class member, implementation of the Second Partial Settlement Agreement shall be stayed, including payment of the Settlement Amount, in whole or in part, pending final determination of any and all such appeals.

VI. DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ESTABLISHMENT OF SUB-ACCOUNTS

A. Deductions from the Settlement Amount

From the Settlement Amount, the following amounts shall be deducted and paid as follows:

1. Five Hundred Thousand Dollars (\$500,000.00) for the Reserve Account as defined and provided for in Section VI.B;
2. One Hundred Fifty Thousand Dollars (\$150,000.00) for the NCAI Account as defined and provided in Section VI.D;

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3. An amount calculated as provided in Section VI.C for the Named Plaintiffs' Fund; and

4. The amount awarded to Class Counsel for attorney's fees and costs as set forth in Section VII.

B. The Reserve Account

1. The Amount Distributed to the Reserve Account

The sum of Five Hundred Thousand Dollars (\$500,000.00) shall be deducted from the Settlement Amount and shall be placed in a separate interest-bearing account ("the Reserve Account").

2. Timing of Funding of the Reserve Account

The Reserve Account shall be established and funded within ten (10) days of the date Defendants make the payment required by Section III.B.

3. Purpose of the Reserve Account

The Reserve account shall be used for the payment or reimbursement of expenses and claims associated with the implementation of the Allocation and Distribution Methodology as set forth in Appendix F and for the reimbursement of costs or advances of Class Counsel in connection with the claims for equitable relief as set out in the second sentence of Section VII.D of this Second Partial Settlement Agreement. Class Counsel may apply periodically to the Court, upon notice to the Defendants, for reimbursement or advance payment of such expenses and claims and, upon approval by the Court, they shall be paid from the Reserve Account. Lead Class Counsel and Co-Class Counsel shall be responsible for supervising the distribution of the Settlement Amount in consultation with Class Counsel for the Direct CSC claim. All those

3. An amount calculated as provided in Section VI.C for the Named Plaintiffs' Fund; and
4. The amount awarded to Class Counsel for attorney's fees and costs as set forth in Section VII.

B. The Reserve Account

1. The Amount Distributed to the Reserve Account

The sum of Five Hundred Thousand Dollars (\$500,000.00) shall be deducted from the Settlement Amount and shall be placed in a separate interest-bearing account ("the Reserve Account").

2. Timing of Funding of the Reserve Account

The Reserve Account shall be established and funded within ten (10) days of the date Defendants make the payment required by Section III.B.

3. Purpose of the Reserve Account

The Reserve account shall be used for the payment or reimbursement of expenses and claims associated with the implementation of the Allocation and Distribution Methodology as set forth in Appendix F and for the reimbursement of costs or advances of Class Counsel in connection with the claims for equitable relief as set out in the second sentence of Section VII.D of this Second Partial Settlement Agreement. Class Counsel may apply periodically to the Court, upon notice to the Defendants, for reimbursement or advance payment of such expenses and claims and, upon approval by the Court, they shall be paid from the Reserve Account. Lead Class Counsel and Co-Class Counsel shall be responsible for supervising the distribution of the Settlement Amount in consultation with Class Counsel for the Direct CSC claim. All those

Class Members who participated in the survey on Direct CSC (specifically identified herein on Appendix G) are entitled to reimbursement of verified actual costs incurred in answering said survey by making application to the Court through Class Counsel. All such reimbursements shall be paid from the Reserve Account.

4. Interest Earned

Interest earned on the investment of the Net Common Fund, after deduction of bank, broker, and custodial charges, shall be transferred on a monthly basis to the Reserve Account.

C. The Named Plaintiffs' Fund

1. Purpose of the Named Plaintiffs' Fund

The Named Plaintiffs' Fund is established in recognition of the valuable contribution made by the Named Plaintiffs to the Class in initiating or intervening in these actions, taking part in the risk of non-recovery, paying a portion of the expenses in order to achieve this settlement, committing substantial reserves to developing and to presenting the representative claims, and negotiating this settlement on behalf of the Class.

2. Distribution of the Named Plaintiffs' Fund

From the Named Plaintiffs' Fund, Plaintiff RNC, Plaintiff Oglala Sioux Tribe, and Plaintiff Zuni shall each receive their distribution from the Settlement Amount, respectively, as follows:

a. Calculation of Named Plaintiffs' Shares

The share of the Settlement Amount to be paid to each of the Named Plaintiffs identified in Section I.C.4 above shall be calculated as follows:

Class Members who participated in the survey on Direct CSC (specifically identified herein on Appendix G) are entitled to reimbursement of verified actual costs incurred in answering said survey by making application to the Court through Class Counsel. All such reimbursements shall be paid from the Reserve Account.

4. Interest Earned

Interest earned on the investment of the Net Common Fund, after deduction of bank, broker, and custodial charges, shall be transferred on a monthly basis to the Reserve Account.

C. The Named Plaintiffs' Fund

1. Purpose of the Named Plaintiffs' Fund

The Named Plaintiffs' Fund is established in recognition of the valuable contribution made by the Named Plaintiffs to the Class in initiating or intervening in these actions, taking part in the risk of non-recovery, paying a portion of the expenses in order to achieve this settlement, committing substantial reserves to developing and to presenting the representative claims, and negotiating this settlement on behalf of the Class.

2. Distribution of the Named Plaintiffs' Fund

From the Named Plaintiffs' Fund, Plaintiff RNC, Plaintiff Oglala Sioux Tribe, and Plaintiff Zuni shall each receive their distribution from the Settlement Amount, respectively, as follows:

a. Calculation of Named Plaintiffs' Shares

The share of the Settlement Amount to be paid to each of the Named Plaintiffs identified in Section I.C.4 above shall be calculated as follows:

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1. Each Named Plaintiff will be assigned a base share percentage in the same manner as every unnamed Plaintiff class member based on the methodology set forth in Appendix F.
2. Each Named Plaintiff's base share percentage as so calculated shall then be multiplied by a factor of 1.2.
3. Each Named Plaintiff's adjusted share percentage shall then be multiplied by \$28,350,000 [the \$29,000,000 Settlement Amount minus the Reserve Fund and the NCAI Fund, both as set forth in Section VI.A.1 and VI.A.3 above].
4. Named Plaintiffs shall share in any residual distribution from the Reserve Account on the same basis as other class members.

b. **Timing of Payment**

The Clerk shall pay to each of the Named Plaintiffs its share when the distribution is made to the other members of the Class.

D. **The NCAI Account**

The sum of One Hundred Fifty Thousand Dollars (\$150,000.00) shall be deducted from the Settlement Amount and placed in a separate interest bearing account ("the NCAI Account") for the purpose of enabling the National Congress of American Indians ("NCAI") to continue to sponsor workshops on issues relating to the Reserved Claims as set forth in Section II.B and to consult with Class Counsel on those issues. The NCAI Account shall be established and funded within 10 working days of the date on which the Final Approval Order becomes final and is not

subject to further review by appeal or by writ of certiorari or ten (10) working days after the date on which Defendants make the deposit required by Section III.B of this Second Partial Settlement Agreement whichever date is later. This arrangement shall be memorialized in the form a contract whose terms and conditions shall be subject to reasonable negotiation between Plaintiffs and NCAI, but shall include the right of Plaintiffs to audit the expenditures of NCAI. The contract shall be filed with the Court.

E. Distribution of Net Common Fund

The amount remaining after the deduction of the amounts designated for the Reserve Account, the NCAI Account, Named Plaintiffs' Fund, and for the attorneys' fees and costs to be paid to Class Counsel, as set out in Section VI.A shall be the "Net Common Fund."

1. Independent CPA

After obtaining Court approval, Class Counsel may employ Kenton Keckler, P.A., as Class monitor and may engage the firm of Rogoff, Erickson, Diamond, and Walker LLC, or any another accounting firm of their choice to manage the distribution of the Net Common Fund, as ordered by the Court.

2. Class Member Shares

Each Class member, except the Named Plaintiffs, shall receive a share of the Net Common Fund according to the procedure and formula in Appendix F. The Named Plaintiffs shall receive their share of the Settlement Amount according to the procedure and formula set forth in Section VI.C above. The procedures for determining and distributing the Net Common Fund to the Class shall be implemented within 10 working days of the date on which the Defendants make the payment required by Section III.A. & B.

VII. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS

A. Application for Attorneys' Fees and Costs

Upon application and subject to the approval of the Court, Class Counsel shall be awarded, allocated and paid from the Settlement Amount their reasonable fees and costs incurred in achieving this Second Partial Settlement Agreement, for services rendered relating to all of the Settled Claims as set forth in Section II.A of this Second Partial Settlement Agreement, and for services anticipated to be rendered through the management and distribution of the Settlement Amount hereunder. Allowable costs include those items identified in Section 10.a of the First Partial Settlement Agreement, including state gross receipts tax on fees, if applicable.

Class Counsel may file an application for an award of attorneys' fees and costs ("the Fee Application") to be paid from the Settlement Amount no later than the date on which the Settlement Notice, as specified in Section IV.B, is mailed to the Class. The amount of fees and estimated costs applied for shall be included in the Settlement Notice, either in dollar amounts or as a percentage of the Settlement Amount. Class Counsel's fee application, as well as Defendants' response to that application, shall be considered at the same time as the Fairness Hearing of this Second Partial Settlement Agreement.

B. Objections to Fee Application

Any member of the Class who wishes to object to the application for attorneys' fees and costs must file a written Objection to Fee Application within the same time period and upon the same conditions as set forth in Section IV.D of this Second Partial Settlement Agreement. Any Class member who has not so filed and served a written Objection to Fee Application may not be

heard to object to that application at the Fairness Hearing. Class Counsel may file a reply to any objection at or before the hearing on the initial application.

C. Timing of Payment of Attorneys' Fees and Costs

The amounts awarded for costs and attorney's fees shall be paid by the Clerk from the Settlement Amount to Class Counsel within ten (10) working days of the date on which the Final Approval Order and the order on the fee application become final and are not subject to further review by appeal or by *writ of certiorari* or ten (10) working days after the date on which Defendants make the deposits required by Section III.B., whichever date is later.

D. Release of Claims for Attorneys' Fees or Litigation Costs

The award of attorneys' fees and costs by the Court under the fee application shall be from the Settlement Amount in lieu of any request, application, or award of attorneys' fees or costs against the Defendants under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other authority for services of Class Counsel rendered with respect to all of the Settled Claims to date, for services rendered to achieve this Second Partial Settlement Agreement, and for services rendered in connection with the distribution of the Net Common Fund, the rights to which alternative basis for recovering fees and costs are hereby waived. The parties further agree that Class Counsel in this action may apply for reimbursement of costs incurred or to be incurred in connection with claims for equitable relief that are reserved under Section II.B, including, but not necessarily limited to, the Benchmarking Order of June 1, 2001, the carry-forward adjustments issue, and equitable relief relating to Direct CSC, from the Reserve Account remaining from the

First Partial Settlement as well as from the Reserve Account under this Second Partial Settlement Agreement.

Nothing in this Second Partial Settlement Agreement is intended to preclude or to constitute a waiver of rights by Class Counsel for attorneys' fees or costs for services performed or costs incurred on any of the Reserved Claims, including services performed or costs incurred in connection with the pursuit of money damages or any equitable or declarative relief.

VIII. JURISDICTION OF THE COURT.

The Court shall retain jurisdiction solely for the purpose of enforcing this Second Partial Settlement Agreement and the First Partial Settlement Agreement, and to adjudicate or otherwise resolve any pending claims which have not been released, pursuant to Section II.B of this Second Partial Settlement Agreement.

IX. INDEPENDENT RATIONALE AND JUSTIFICATION

Nothing contained in this Second Partial Settlement Agreement shall be deemed to be an approval or adoption by any party of any party's methodology or justification in arriving at this Second Partial Settlement Agreement or the amount to be paid as the Settlement Amount or of any formula used by either party in reaching this Second Partial Settlement Agreement or the rationale for distributing it to members of the Class.

X. JUDGMENT FUND

The judgment which will be entered upon approval by the Court of this Second Partial Settlement Agreement shall be paid from the Judgment Fund. The parties have not resolved the issue of whether or not 41 U.S.C. §612(c) requires the Defendants to reimburse the Judgment

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Fund from appropriations for operation of Indian programs. The parties' positions and procedural agreement as to this matter are set out in Section 11 of their First Partial Settlement Agreement and remain in effect. Section 11 of the First Partial Settlement Agreement is incorporated by reference into this Second Partial Settlement Agreement as if fully set forth herein. The parties reserve all of their rights, claims, or defenses as regards this issue.

XI. PARTIES BOUND BY THIS SECOND PARTIAL SETTLEMENT AGREEMENT

This Second Partial Settlement Agreement binds each and every Defendant as defined in Section I.C.6 above. This Second Partial Settlement Agreement also binds the Class, including but not limited to each of the Named Plaintiffs and each and every member of the Class.

XII. INTEGRATION

This Second Partial Settlement Agreement is the integrated understanding of the parties and replaces and supersedes any prior agreement, understanding, or contract between them regarding settlement of this dispute, except that the parties' First Partial Settlement Agreement shall remain in full force and effect.

XIII. COOPERATION

The parties agree to exchange information and to prepare and execute such instruments as may be reasonably necessary to effectuate this Second Partial Settlement Agreement.

XIV. MODIFICATION

This Second Partial Settlement Agreement may be modified only with the written approval of the parties to this agreement and with the approval of the Court, upon such notice to the Class, if any, as the Court may require.

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XV. COUNTERPARTS

One or more of the parties, by and through counsel, may execute this Second Partial Settlement Agreement by executing the original signature page or by executing a counterpart or copy of the signature page. When each of the parties, by and through counsel, has executed either the original signature page or a counterpart or copy of the signature page, the Second Partial Settlement Agreement shall be deemed executed by all the parties regardless of whether the signature of every party or their counsel appears on every signature page.

XVI. NO ADMISSION OF LIABILITY

This Second Partial Settlement Agreement does not represent an admission of liability by the Defendants. The terms of this Second Partial Settlement Agreement, the negotiations leading up to this Second Partial Settlement Agreement, the data, documents, filings, statements made in connection herewith, or information exchanged between the parties in the course of those negotiations, may not be offered, taken, construed, or introduced as evidence of liability or as an admission or statement of wrongdoing by the Defendants, of any fact, matter or proposition, and shall not be used in any manner or for any purpose in any subsequent proceedings in this action or in any other action, whether judicial or administrative, except that the documents and information may be presented to the Court by the parties to this agreement solely to obtain the Court's final approval of this Second Partial Settlement Agreement. This Section shall not bar any party's right to secure discovery pursuant to applicable discovery rules.

XVII. NOTICES

Notices required under this Second Partial Settlement Agreement shall be sent to:

A. Lead Class Counsel:

Michael P. Gross
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505-7602
Telephone (505) 983-6686
Fax (505) 989-1096
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Co-Class Counsel:

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B. Class Counsel for the Direct CSC Claim:

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C. Counsel for Defendants:

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COUNSEL FOR PLAINTIFF OGLALA SIOUX TRIBE

Michael P. Gross

9/4/02

MICHAEL P. GROSS

Date

MARVIN AMIOTTE

Date

PLAINTIFF PUEBLO OF ZUNI

By its Governor

Date

**COUNSEL FOR PLAINTIFF PUEBLO OF ZUNI, AND CO-CLASS COUNSEL
FOR THE DIRECT CSC CLAIM**

LLOYD B. MILLER

Date

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COUNSEL FOR PLAINTIFF OGLALA SIOUX TRIBE

MICHAEL P. GROSS

Date

Marvin Amiotte

MARVIN AMIOTTE

08/08/02

Date

PLAINTIFF PUEBLO OF ZUNI

By its Governor

Date

**COUNSEL FOR PLAINTIFF PUEBLO OF ZUNI, AND CO-CLASS COUNSEL
FOR THE DIRECT CSC CLAIM**

LLOYD B. MILLER

Date

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